

REPORT OF THE INTERAGENCY COUNCIL ON
ENVIRONMENTAL LEAD TO THE GOVERNOR

Submitted March 17, 2006
for the period January through December 2005

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Rhode Island is Helping Property Owners Comply with the Lead Hazard Mitigation Law

I. Introduction.

The state of Rhode Island was well prepared for the implementation of the Lead Hazard Mitigation Law in November 2005. Our efforts over the past few years ensured that a solid infrastructure was in place to create a smooth process for property owners to comply with the law. Since its implementation in November, the state's key agencies have shifted their focus to ensure that all property owners receive the assistance needed to comply with the law, working to provide seamless customer service to these individuals. To this end, the agencies involved in the Interagency Council on Environmental Lead have been working to strengthen cross-agency collaboration, and to continue to provide programs and services in a professional and timely manner. One example of significant collaboration was the establishment of a Memorandum of Understanding between the Department of Health and the Housing Resources Commission to improve research and data around children's environmental health issues related to housing in the state. The MOU is located in Appendix 1.

The Lead Hazard Mitigation Law provides the state with an excellent opportunity to address childhood lead poisoning through primary prevention – making homes safe for families before children are poisoned. Recognizing the important impact that the law will have on the state, the Department of Health has recently revised its milestone with regard to the elimination of childhood lead poisoning by the end of 2010 to reflect the opportunities presented under the Lead Hazard Mitigation Law. This milestone is described in detail in Appendix 2.

A special review of the Lead Poisoning Prevention Act and the Lead Hazard Mitigation Act conducted by the Auditor General in May 2004 concluded that the state agencies have been successful in our efforts to inform Rhode Islanders about the Lead Hazard Mitigation Law, its requirements, and resources that are available to help property owners. The full report is available at <http://www.oag.state.ri.us/reports/leadacts2005.pdf>. The Interagency Council will continue working diligently to ensure the success of the Lead Hazard Mitigation Law. We look forward to continuing our work to ensure that property owners have all of the knowledge, tools, and resources needed to comply.

II. Rhode Island is helping the public understand data.

One way that we can promote the public's health is ensuring that the public has access to accurate data that will help them better understand the major health issues that families in Rhode Island are facing. In explaining the data on childhood lead poisoning, one of the pieces of data that is often misused is the level at which a child is considered to be lead poisoned. There are two key words that need to be understood in interpreting data on childhood lead poisoning. The first is "lead poisoning" and the second is "action level for intervention." The definition of childhood lead poisoning is set by the Centers for Disease Control and Prevention (CDC), a federal agency charged with guiding states as they work to eliminate childhood lead poisoning in their communities. The CDC utilizes current research to the best of its ability to define health issues and recommend appropriate interventions. As such, the CDC has defined childhood lead poisoning as having 10 micrograms of lead per deciliter of blood (10 mcg/dL) since 1991. This definition of 10 mcg/dL is used in all 50 states; it does not vary from state to state. Rhode Island follows this national standard and also considers a child to be lead poisoned at a level of 10 mcg/dL.

What varies from state to state are the "action levels for intervention." The "action levels" are the blood lead levels at which state or city resources are used to provide educational, case management and/or environmental inspection services to families with a lead poisoned child. The action levels for each state are guided by recommendations from the CDC but are ultimately dependent upon state financial and staff resources available to assist families. Recent CDC guidelines recommend that community prevention activities, such as nutritional and educational campaigns, begin at blood lead levels of > 10 mcg/dL, and that individual prevention activities,

such as case management and environmental inspections, begin at >15 mcg/dL.¹ Based on these guidelines and updated scientific research, in October 1997 Rhode Island lowered its action level for intervention (note: there was no change in the definition of lead poisoning) from 25 mcg/dL or greater to 20 mcg/dL or greater. In 2002 the Rhode Island Department of Health again revised its action level to provide case management services for children with a single venous blood lead test of 15 mcg/dL, and offered case management and inspection services to families of children with a persistent lead level of 15-19 mcg/dL or single venous blood lead level of 20 mcg/dL or greater. These revisions to the action level are helping to provide more services for Rhode Island families with a lead poisoned child. As Rhode Island continues on its progress toward the elimination of childhood lead poisoning, we hope to be able to utilize our resources to provide services for even more families of children with lead poisoning.

III. Rhode Island is helping keep property owners and tenants informed about the requirements of the law.

The Housing Resources Commission and its partner agencies have worked tirelessly throughout 2005 to ensure that property owners are aware of their requirements under the law. The Housing Resources Commission hired two staff through its HUD Lead Outreach Grant in 2005. These additional staff resources have greatly aided the Housing Resources Commission in assisting property owners and ensuring quality technical assistance and customer service.

By the close of 2005, over 17,000 property owners had taken the three-hour Lead Hazard Awareness Class. This number is well over the goal of training 9,900 property owners between 2004 and 2007 as outlined in Comprehensive Strategic Plan. There are currently 22 organizations that are certified to offer the three-hour class. These organizations are providing classes that range from no cost to \$50.

The Housing Resources Commission and the Department of Health have continued to collaborate on a series of public awareness campaigns to inform property owners and tenants about the law. In 2005, the public awareness campaigns ran in January, February, September, and October and included radio, billboards and print media.

Additionally, Rhode Island has made great strides in the last year to make the three-hour class available to property owners through a variety of media. Online classes are now available through Rhode Island Lead Technicians, and classes on DVD and/or VHS are in their final stages of editing. The classes will run on Cable and Public Access Television in early March, and then will be made available to the public for sale and/or rental in the spring of 2006.

Property owners and tenants have also been informed through the following efforts:

- 60,000 booklets on the Lead Hazard Mitigation Law have been distributed to property owners and tenants.
- Over 5,278 individuals have been assisted through the HRC's 1-800 hotline.
- A Frequently Asked Questions (FAQ) sheet is available on the HRC's webpage at www.hrc.ri.gov.

Efforts will continue in 2006 to ensure that both property owners and tenants are aware of their rights and responsibilities under the law.

IV. Rhode Island is helping property owners achieve Certificates of Conformance.

The Department of Health has licensed 193 certified environmental lead inspector technicians and 43 certified environmental lead inspectors to perform comprehensive, limited and mitigation inspections. These

¹ Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control – October 1991. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, GA 30333.

professionals have already begun issuing Certificates of Conformance to property owners across the state. To date, 3,115 rental units have proactively received Certificates of Conformance. That is in addition to the 1,969 lead-safe certificates that were issued between in 2005. Additional data on units receiving lead-safe certificates in 2005 are included in Appendix 3.

There are currently three training providers licensed to conduct the 24-hour Environmental Lead Inspector Technician course and two training providers licensed to conduct the 40-hour Environmental Lead Inspector course.

V. Rhode Island is helping to make property information accessible online.

All of the public list requirements of the Lead Poisoning Prevention Act, as amended, (Highest Risk Properties, Properties with Multiple Poisoning, Second Notice of Violation Listing) are available at the Department of Health web site. The "highest risk properties" list is updated as information changes; and the other lists are updated monthly or more often if needed.

The Housing Resources Commission, with assistance from the state's web system (RI.gov), set up a web-based data system that is available to lead professionals and allows them to issue Certificates of Conformance and track data on units in compliance. The Housing Resources Commission will have a search engine available by the summer of 2006 so that the public can access information on rental units that have achieved compliance.

VI. Rhode Island is helping insurance companies write lead liability policies for their clients.

The Department of Business Regulations promulgated Insurance Regulation 101, effective on April 8, 2003, to establish a uniform policy regarding lead poisoning coverage in pre-1978 residential rental property and to set forth requirements to assure the availability of insurance coverage for losses and damages caused by lead poisoning. Since the promulgation of Insurance Regulation 101, the Department issued Insurance Bulletins #2003-9, #2003-13, #2003-17, #2004-1, and #2005-6 to address issues that arose out of consumer complaints and miscellaneous inquiries relating to the insurers' issuance of lead liability coverage in Rhode Island. These Bulletins are included in Appendix 4.

In accordance with Insurance Regulation 101, insurers and advisory organizations were required to submit proposed policy forms and rate filings for lead liability coverage to the Department by October 1, 2003. The Department, along with its consulting actuaries, reviewed the proposed filings for compliance with the Lead Hazard Mitigation Law. The Department expended a great deal of time and resources reviewing filings to ascertain compliance with the Law. Approvals were issued to be effective July 1, 2004. The Department spoke at various Industry meetings and seminars targeted at the insurance regulatory aspects of the Law, including seminars conducted by the Independent Insurance Agents of Rhode Island, the Rhode Island Joint Reinsurance Association, and the Chartered Property Casualty Underwriters Society. A representative from the Department of Health also participated in the seminars.

The Department proposed amendments to Insurance Regulation 101 in order to implement the 2005 amendments to RIGL § 42-128.1-9 and to incorporate issues that have been addressed by bulletin since the initial enactment of RIGL § 42-128.1-9. A public hearing was held on September 8, 2005. The amendments became effective on October 17, 2005. In light of these changes, insurers were required to revise filings to comply with the provisions of the 2005 Act. Effective November 1, 2005, insurers are required to follow Insurance Regulation 101 as amended. Insurers are also required to file Annual Reports with the Insurance Division on February 1, 2007 regarding insurance coverage for pre-1978 rental properties in Rhode Island.

VII. Rhode Island is helping exterior lead paint contractors self-certify compliance with regulations.

The Rhode Island Department of Environmental Management (DEM) successfully implemented a self-certification program for the removal of exterior lead paint by contractors in 2005. The program is designed as a simpler and more useful way to regulate removal of exterior lead paint, and improve compliance with environmental regulations, specifically DEM Air Pollution Control Regulation # 24, entitled, "Removal of Exterior Lead Based Paint from Exterior Surfaces", as well as compliance with the federal Pre-Renovation Education Rule.

The stakeholder process, which included representatives from DEM, the Department of Health, the Housing Resources Commission, URI Center for Pollution Prevention & Environmental Health, EPA Region 1, and industry representatives, concluded in February 2005. The RI Exterior Lead Paint Removal Program website was launched in April, and can be located at <http://www.dem.ri.gov/programs/benviron/assist/extlead/index.htm>. Additional information about the program is located in Appendix 5.

The Department of Environmental Management conducted extensive outreach throughout 2005 to ensure that contractors are informed about the program and have many opportunities to enroll and participate. Staff from DEM conducted outreach at the following events in 2005: The Ocean State Painting & Decorating Contractors of America Workshop; Pro Shows for painters held in March and April; Open House for Rhode Island Housing's Lead Program; and the Consortium of North East States and Tribes (CONEST) meeting dealing with lead issues. The Department of Environmental Management will continue to promote its self-certification program in the upcoming year, through outreach and education efforts, as well as partnerships with other state agencies working with the target audience.

As of December 31, 2005, twenty-one exterior paint contractors were participating in the program, and had certified that they are complying with all applicable regulations when working on Rhode Island properties. Compliance with DEM regulations ensures that exterior painting work is being conducted in a manner that is safe for Rhode Island families.

The Department of Environmental Management continues to respond in a timely fashion to paint related complaints received from the general public. For the calendar year 2005, the Office of Compliance and Inspection (OC&I) received a total of 129 lead paint related complaints. In response to those complaints, inspectors conducted 104 investigations addressing 123 of those complaints. In addition to the 104 investigations, OC&I inspectors conducted 21 re-inspections. These investigations resulted in 42 violations. A total of 37 informal enforcement actions and 5 formal enforcement actions were issued to address those violations.

VIII. Rhode Island is helping create healthier communities by enforcing.

On June 30, 2005 Attorney General Patrick C. Lynch announced the historic multi-million dollar lead paint clean-up effort in Rhode Island. The announcement followed the Attorney General's motion to dismiss DuPont from the State's public-nuisance litigation filed against the Lead Industries Association Inc. and several corporations. The DuPont Corporation will make a contribution of more than ten (10) million dollars to the Children's Health Forum (CHF) for lead paint remediation, public education and compliance programs in Rhode Island. DuPont also will contribute \$1 million to the Brown University Medical School to assess the ways in which this important public health problem can be better addressed.

On October 10, 2005 the Attorney General announced the formation of the Attorney General's Advisory Commission on Lead Paint. The panel will assist the Attorney General in identifying areas where some of the more than \$10 million contributed by DuPont to the Children's Health Forum will be dedicated.

On October 4, 2005, the constitutionality of the entire Lead Hazard Mitigation Act was challenged by a group of absentee landlords. Superior Court Justice Fortunato declined to enjoin the enforcement of the Act as

requested, and the state agencies continue to implement the law as written by the legislature and implemented in November 2005.

The Department of the Attorney General continues to work with the Department of Health on an effective enforcement strategy. In 2005 the Department of Attorney General closed 25 Department of Health (DOH) referred lead poisoning prevention cases. Presently, of the approximately 300 DOH referred cases since the 1990's, only 84 remain open in various stages of prosecution by the Attorney General's Office. Additionally, the Attorney General's office sent letters relating to 52 properties that were not referred for prosecution.

IX. Rhode Island is helping families of lead poisoned children.

Lead Centers funded by the Department of Human Services continue to receive referrals from the Department of Health and offer case management services to the families of lead poisoned children in the state. In an effort to contribute housing solutions to the lead poisoning problem in the state, affecting a significant number of the Rlte Care population, Medicaid has also formulated a process to allow Lead Centers to work with Rlte Care families to provide window replacement and related home renovations if the units qualified. In 2005, 43 windows in 3 units were replaced, helping to reduce future lead poisoning cases at these properties. Medicaid will continue to work with Lead Centers to assist in the implementation of window replacement and spot repairs, to ensure that a greater number of Rlte Care families have access to this benefit.

X. Next Steps.

The Interagency Council on Environmental Lead will continue to meet to coordinate statewide efforts to prepare Rhode Island for the implementation of the Lead Hazard Mitigation Law.

Current Council Membership includes:

David R. Gifford, MD, MPH – Department of Health
Terrence Gray – Department of Environmental Management
Noreen Shawcross – Housing Resources Commission
Sharon Kernan – Department of Human Services
Carol Schraeder – R.I. League of Cities and Towns/City of Warwick
Laura Marasco – Department of Attorney General

Other Attendees include:

Paula Pallozzi – Department of Business Regulation
Elizabeth Dwyer – Department of Business Regulation

The state has continued its strong efforts over the past year to assist property owners and the general public in understanding and complying with the Lead Hazard Mitigation Law. This law is a critical piece of the puzzle in helping Rhode Island eliminate childhood lead poisoning from its homes and communities and we look forward to monitoring and continuing its success in the years to come.

XI. Appendices.

1. Memorandum of Understanding Between HEALTH and HRC
2. Eliminating Lead Poisoning in Rhode Island – DRAFT Milestone
3. Units That Completed Lead Hazard Reduction In 2005
4. Department Of Business Regulations Bulletins 2003-9, 2003-13, 2003-17, 2004-1, 2005-6.
5. Rhode Island Exterior Lead Paint Removal Certification Program – Fact Sheet

1. Memorandum of Understanding Between HEALTH and HRC

**Memorandum of Understanding Between
the Rhode Island Department of Health and the Housing Resources Commission**

WHEREAS, the Rhode Island Department of Health (HEALTH) is responsible for administering the Lead Poisoning Prevention Act, RIGL 23-24.6 and for protecting the public health and public interest by establishing a comprehensive program to reduce exposure to environmental lead and thereby prevent childhood lead poisoning;

WHEREAS, HEALTH is responsible for implementing Rhode Island's Plan to Eliminate Childhood Lead Poisoning by 2010;

WHEREAS, the Housing Resources Commission's (HRC) works to ensure that all Rhode Islanders have access to safe and affordable housing and is responsible for implementation of the Lead Hazard Mitigation Law, RIGL 42-128.1-5 and serves as the lead state agency for lead hazard mitigation, planning, education, technical assistance, and coordination of state projects and state financial assistance to property owners for lead hazard mitigation;

WHEREAS, HEALTH and the HRC both view access to safe, healthy, and affordable housing as a critical component to improving the lives of Rhode Island families and achieving the goals of both agencies;

HEALTH and HRC agree to enter into this Memorandum of Understanding to obtain necessary information that is for the mutual benefit of HEALTH and HRC thorough engaging in a collaborative effort to identify effective environmental health interventions at a statewide level across housing and health programs in the state, and for families in order to coordinate efforts to provide healthy, safe, and affordable housing to all Rhode Islanders. This MOU

CORE ACTIVITIES OF THE COLLABORATIVE

HEALTH and the HRC perceive a critical need to make progress on the healthy housing issues described below by creating a HEALTH-HRC collaborative and having one individual lead this collaborative. HEALTH and HRC agree to participate in this collaborative as detailed below.

HEALTH agrees to:

- a. Provide **a portion** of one staff person's time (Ms. Ruth Lindberg) for the space of calendar year 2006, while Ms. Lindberg continues to be staff at the Childhood Lead Poisoning Prevention Program at the RI Department of Health and therefore reports to management of the Lead Program at HEALTH;
- b. Allow Ms. Lindberg to work on the coordination of this statewide effort as a liaison between HEALTH and the HRC;
- c. Provide leadership support to initiate partnerships and mobilize agencies as needed;
- d. Meet quarterly with leadership from the Housing Resources Commission to review progress and identify any necessary changes to this agreement.

The Housing Resources Commission agrees to:

- a. Work with Ms. Lindberg during calendar year 2006 as a liaison between HRC and HEALTH and provide leadership support from within the Commission to initiate partnerships and mobilize agencies as needed;
- b. Meet quarterly with leadership from HEALTH to review progress and identify any necessary changes to this agreement.
- c. Support, cooperate and facilitate Ms. Lindberg's work as it relates to this agreement as necessary.
- d. Coordinate with management of the Lead Program at HEALTH to ensure that Ms. Lindberg continues to fulfill her responsibilities within HEALTH and to mutually agree on priorities for her work.

Activities to be performed and delivered by Ms. Lindberg as a liaison between HEALTH and HRC, and mutually agreed upon by both agencies are listed below.

- a. Continue to staff the Childhood Lead Poisoning Prevention Program and collaborate with other local groups and/or efforts that may have an impact in matters related to healthy housing in Rhode Island, and facilitate the interaction and common goal setting among and between all parties;
- b. Continue to convene the "Healthy Housing Collaborative" established in July, 2005 and utilize this group as an advisory board;
- c. Develop a vision statement for "healthy housing" in Rhode Island with input from the Healthy Housing Collaborative;
- d. Conduct a thorough literature review, and prepare a report, on: The impacts of unhealthy housing on child health and development; Benefits for child health and development associated with improved housing maintenance and building practices; Cost-benefit analysis for healthy housing building and maintenance practices.
- e. Conduct an assessment of existing state resources (financial and staff) currently allocated to healthy housing, complete this assessment and present it in the form of a final report;
- f. Conduct an assessment of major strategic plans in the state (Rhode Island's Plan to Eliminate Childhood Lead Poisoning, Rhode Island's Plan to End Homelessness, Rhode Island's Five Year State Strategic Plan, and the city and town affordable housing plans mandated by the Low and Moderate Income Housing Act) to identify overlapping goals and opportunities for partnership and collaboration;

In the process of completing the above activities, an effort will be made to also lay the groundwork and take some initial planning steps to develop the following:

- g. Develop a research strategy that could be utilized to fill in gaps in research at the local and/or national level in conjunction with funding sources such as local Universities;
- h. Conduct a SWOT analysis (strengths, weaknesses, opportunities, and threats) for the state of Rhode Island in relation to healthy housing objectives;
- i. Develop a Request for Proposals (RFP) to mobilize the state's vision for a statewide housing database.

II. PERIOD OF AGREEMENT AND TERMINATION

The period of this agreement shall commence on January 17th 2006 and remain in full force and effect until December 31st, 2006, at which time the parties can reassess the needs and may jointly decide to extend the agreement period as needed.

Either party can terminate this agreement if Ms. Lindberg's employment with the Department of Health ends, or when there is a substantial breach of the obligations described herein by the either agency, or with thirty (30) days advance notice of a cancellation for any reason.

III. AGREEMENT MODIFICATIONS

This agreement may be amended and/or extended at any time by mutual written consent to more accurately reflect changes in policies, procedures, timeframes, or other reasonable circumstances.

In witness whereof, both the Rhode Island Department of Health and the Housing Resources Commission, through their duly authorized representatives, have hereunto executed this Agreement as of the last date below written.

Magaly Angeloni
Manager, RI Childhood Lead Poisoning Prevention Program

Date: _____

Noreen Shawcross
Executive Director, Housing Resources Commission

Date: _____

2. Eliminating Lead Poisoning in Rhode Island – DRAFT January 31, 2006

ELIMINATING LEAD POISONING IN RHODE ISLAND DRAFT

Goal: To eliminate childhood lead poisoning in Rhode Island by the end of 2010.

Milestone: To decrease the number of new cases of lead poisoning (defined as a blood lead level of 10 mcg/dL or more) in children under six years of age in all Rhode Island communities without displacing children, decreasing screening rates or decreasing access to affordable housing.

Four (4) measures/areas that will jointly determine progress in the elimination goal:

1. Decrease the number of new cases of lead poisoned children (≥ 10 mcg/dL) in the state from 621 (at the end of) 2005 to:

- 520 at the end of 2006
 - 420 at the end of 2007
 - 320 at the end of 2008
 - 220 at the end of 2009
 - 120 at the end of 2010²
2. Maintain and improve the screening rates³ as follows:
- 18 month old children screened for lead at least once, at about 75%,
 - 36 month old children screened for lead twice, 12 months apart, at about 52%.
3. Availability of affordable housing, to be measured by:
- Developing proxies to measure affordable housing by the end of 2006, e.g. the number of subsidized housing units by city and town; the progress made by cities and towns on achieving goals established for affordable housing under the Low and Moderate Housing Act, etc.
 - Utilizing those proxy measures by the end of 2007
 - Refining measures of affordable housing by the end of 2008, and continuing to use these measures through 2010
4. Displacement of children to be measured by public data sets (e.g., KIDSNET data, free school lunch).

Report: The RI CLPPP will prepare an annual report that will include data on each of the measures stated above to assess progress made towards its goal to eliminate lead poisoning. The Annual report will be issued in May 2007 for the first time and each May thereafter. This report will also acknowledge cities and towns that are working towards the elimination goal. Cities/towns will be recognized as having taken steps towards the elimination of lead poisoning when they:

1. Provide HEALTH/HRC with an electronic annual report, including a list of addresses, units in their jurisdiction considered to be low and moderate income housing. For many cities and towns these reports can be submitted in conjunction with updated reports submitted to the Housing Resources Commission under the Low and Moderate Housing Act;
2. Provide HEALTH/HRC with an electronic file of unique addresses, with homeownership status. Addresses must be prepared to be used with Geographic Information Systems (GIS) software;
3. Identify ways to obtain an electronic version of addresses of homes in RI that are HUD subsidized;
4. Identify a standardized way to collect data from every unit from every property;
5. Work with HEALTH/HRC to gather the above mentioned data in a housing surveillance system.

² No further Rhode Island cases of lead poisoning will be identified after January 2011.

³ This screening rate is calculated for a specific birth cohort. Data included here is for the 2001 birth cohort, as detailed in the "Childhood Lead Poisoning in Rhode Island: The Numbers, 2005 Edition".

3. UNITS THAT COMPLETED LEAD HAZARD REDUCTION IN 2005.

There are currently four⁴ Lead Hazard Reduction Programs in Rhode Island offering low or no-interest loans to property owners in order to make their housing units lead-safe. These programs have played a large role in improving the safety of housing units in Rhode Island communities. The chart below details the number of units achieving lead-safe certificates through one of these programs in the year 2005.

Lead Hazard Reduction Program	Number of housing units achieving lead-safe certificates through the program
City of East Providence Home Rehabilitation Lead Safe Program	15* *This number indicates properties achieving lead-safe certificates in the program from August 2004 –July 2005
City of Providence Lead and Healthy Homes Program	69
Warwick Lead Hazard Reduction Program	41
Woonsocket Safety First! Home Repair Cost Assistance Program	19
Rhode Island Housing and Mortgage Finance Corporation	139

⁴ The City of East Providence's funding for Lead Hazard Reduction ended at the close of fiscal year 2005.

4. BULLETINS ISSUED BY THE DEPARTMENT OF BUSINESS REGULATIONS.



Department of Business Regulation

233 Richmond Street
Providence, RI 02903

Insurance Bulletin Number 2003-9

Underwriting Restrictions Based on Age or Geographic Location of Property

Property & Casualty insurers should remain mindful of the restrictions in underwriting prescribed by the legislature in R.I. Gen. Laws § 27-29-4(7)(iii) which provides:

Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

- (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext for unfair discrimination; or
- (B) The refusal, cancellation, or limitation is required by law or regulation.

R.I. Gen. Laws § 27-29-4(7)(iv) contains identical language except for the substitution of the phrase “age of the residential property” for “geographic location of the risk”.

The Department takes this opportunity to clarify what is meant by “business purpose which is not a pretext for unfair discrimination.” This phrase does not allow an insurer to refuse to issue, renew, cancel or limit coverage because costs or loss ratios are higher for properties of a certain age or geographic location. Insurers may not refuse to issue or renew, nor may they cancel or limit coverage because of age or geographic location unless the insurer demonstrates one of the following:

- (1) The refusal, cancellation or limitation is required by law or regulation; or
- (2) (i) The refusal, cancellation or limitation is for a business purpose that is not a pretext for unfair discrimination; and
 - (ii) (a) no meaningful rate can be calculated to cover the risk by using available statistical tools, or

- (b) the insurance premium can be calculated but would be so high as to equal or exceed the amount insured.

The prohibitions discussed in this Bulletin do not limit insurers' ability to underwrite by requiring compliance with certain conditions on a nondiscriminatory basis before the insurer will issue or renew the policy. For example, while an insurer may not refuse to issue or renew, nor may they cancel or limit coverage because a property was built before a certain date, the insurer may require certification of lead or asbestos abatement. The underwriting requirements may be tied to properties of a certain age such as properties built prior to the time lead or asbestos was barred from building materials.

Insurers may not require that the insured produce a "Lead Free" certificate in order to certify lead abatement. Lead abatement is defined by R.I. Gen. Laws § 42-128.1-4 as either "Lead Free" or "Lead Safe". Since "Lead Free" certificates are not generally available for pre-1978 properties, the Department considers an underwriting policy that mandates a "Lead Free" certificate to violate R.I. Gen. Laws § 27-29-4(7). Insurers must accept a "Lead Safe" certificate as proof of abatement.

The Department expects that all insurers will review their underwriting guidelines and immediately bring their practices into compliance with this Bulletin. This Bulletin is an interpretation of existing law. The Department expects that insurers will not only comply prospectively but will also attempt to remedy unlawful activity (i.e. nonrenewals and declinations) in violation of this Bulletin. The Department will investigate all consumer complaints to ascertain compliance with this Bulletin. In addition, future market conduct examinations by the Department will ascertain compliance with applicable laws, regulations and this Bulletin.

Marilyn Shannon McConaghy
Director, Department of Business Regulation
July 7, 2003



Department of Business Regulation

233 Richmond Street
Providence, RI 02903

Insurance Bulletin Number 2003-13

Expiration of Lead Liability Exclusions

The Lead Hazard Mitigation Act provides that after June 30, 2004 no insurance company shall exclude coverage for losses or damages caused by lead poisoning. Insurers which currently have approved exclusions have requested the position of the Department as to whether these exclusions contained in policies in-force on June 30, 2004 will expire on June 30, 2004 or whether the exclusion will remain in-force as written until renewal or other permissible termination of the policy.

R.I. Gen. Laws § 42-128.1-9(b) provides:

Except as otherwise provided by this chapter, no insurance company licensed or permitted by the department of business regulation to provide liability coverage to rental property owners shall exclude, after June 30, 2004, coverage, for losses or damages caused by lead poisoning. The department of business regulation shall not permit, authorize or approve any exclusion for lead poisoning, except as specifically provided for by this chapter, that was not in effect as of January 1, 2000, and all previously approved exclusions shall terminate June 30, 2004. As of July 1, 2004, coverage for lead poisoning shall be included in the policy offered by endorsement, as set forth in this section.

This statute does not provide or contemplate a retrospective application and will only be applied prospectively. Therefore, if an in-force policy has an approved exclusion in place prior to June 30, 2004, this exclusion will remain in effect until the expiration or other permissible termination of the policy. Any policy issued, delivered or renewed after June 30, 2004 must follow R.I. Gen. Laws § 42-128.1-9.

Marilyn Shannon McConaghy
Director, Department of Business Regulation
July 1, 2003

Department of Business Regulation

233 Richmond Street
Providence, RI 02903

Insurance Bulletin Number 2003-17

Rates and Forms for Lead Liability Coverage for Pre-1978 Residential Rental Properties

R.I. Gen. Laws § 42-128.1-9(f) and Insurance Regulation 101 (Section 8) require that insurers file with the Department rates and forms for proposed lead liability coverage and endorsements no later than October 1, 2003. For any insurer that intends to adopt any advisory or rating organization filing, the Department does not require a filing at this time. Once the Department grants approval of an advisory/rating organization filing, the insurer may then make the necessary filings to bring their forms and rates into compliance as needed. However, for any insurer that does not elect to adopt the advisory/rating organization filing or for any independent filer, rates and forms for lead liability coverage must be filed with the Department in accordance with R.I. Gen. Laws § 42-128.1-9 and Insurance Regulation 101 no later than October 1, 2003.

Marilyn Shannon McConaghy
Director, Department of Business Regulation
October 1, 2003

Department of Business Regulation

233 Richmond Street

Providence, RI 02903

Insurance Bulletin Number 2004-1

Notification Requirements for Insurers with Lead Liability Exclusions

The Lead Hazard Mitigation Act goes into effect on July 1, 2004. On that date owners of pre-1978 residential rental housing will lose the protection of the “innocent owner” status that existed in prior law. Pursuant to Insurance Bulletin 2003-13, lead exclusions in policies issued prior to July 1, 2004 will remain in effect until expiration.

If a policy issued prior to July 1, 2004 excludes coverage for lead liability and the policy will not expire until after July 1, 2004, persons covered by those policies may be able to obtain “stand alone” lead liability coverage from the FAIR Plan beginning July 1, 2004. However, those insureds may not be aware of the availability of the FAIR Plan coverage until their next renewal.

To address this issue, all insurers that issued policies with lead liability exclusions where the policy period will extend past July 1, 2004 must provide written notification to insureds of the availability of FAIR Plan coverage. The insurer shall provide this notification directly or indirectly by the insurer through its producer. This written notice must be separately sent to the insured not later than June 1, 2004. Notices must also be sent prior to subsequent renewals as per Regulation 101. The notice shall be in at least 16-point type, clearly state that the policy does not include lead liability coverage and that the insured is eligible for lead liability coverage through the FAIR Plan unless otherwise ineligible. The notice must provide information on how the insured can contact the FAIR Plan, including the FAIR Plan's address and telephone number(s), including a toll free number.

Marilyn Shannon McConaghy

Director, Department of Business Regulation

April 9, 2004

Department of Business Regulation

233 Richmond Street

Providence, RI 02903

Insurance Bulletin Number 2005-6

Lead Hazard Mitigation Act

All carriers that received approval of rates and forms in accordance with R.I. Gen. Laws § 42-128.1-9 and Insurance Regulation 101, should be aware that R.I. Gen. Laws § 42-128.1-9 has been amended to postpone its effective date until November 1, 2005. S 1174 sub B was signed by Governor Carcieri on July 1, 2005.

The amendments to the Lead Hazard Mitigation Act added R.I. Gen. Laws § 42-128.1-9 (g) which provides in part:

(g) All endorsements, rates, forms and rules for lead liability coverage approved by the department of business regulation to be effective on or after July 1, 2004 are hereby extended to be effective November 1, 2005.

Any portion of a Departmental Regulation or Bulletin that is in conflict with the amended statute is superceded. The Department intends to amend its Regulations and Bulletins as necessary prior to November 1, 2005.

Insurers should not refile forms, rates or exclusions that were approved for use prior to June 30, 2005. The forms, rates and exclusions that were in effect prior to June 30, 2005 will remain in effect until October 31, 2005 or until the carrier receives approval to use alternative forms, rates or exclusions.

The Department will maintain the *status quo* with regard to exclusions. The Department will maintain the moratorium on approval of new exclusions until November 1, 2005. Carriers that did not have approved exclusions prior to June 30, 2005 should continue to write based upon their previously approved forms, rates and rules.

In addition to the statutory changes noted above, R.I. Gen. Laws § 23-24.6-17 (b), relating to the “innocent owner” liability standard of property owners, has also been extended until November 1, 2005.

Joseph Torti III

Associate Director and Superintendent of Insurance

July 6, 2005



OTCA

Office of Technical &
Customer Assistance

Fact Sheet

Pollution Prevention Program

Rhode Island Exterior Lead Paint Removal Certification Program

The Rhode Island Exterior Lead Paint Removal Certification Program was implemented by DEM in April 2005. As with Rhode Island's Auto Body Certification Program, it is designed as a simpler and more useful way to regulate, in a less threatening manner, segments of the painting contractor and remodeler/renovation industries that engage in the removal of exterior lead paint. It is intended to improve compliance with environmental regulations.

With funding provided from EPA New England in 2000, and reprogrammed to this project in 2003, it is an extensive certification program based on compliance with DEM Air Pollution Control Regulation # 24, entitled, "Removal of Exterior Lead Based Paint from Exterior Surfaces", as well as compliance with the federal Pre-Renovation Education Rule described below. It also covers lead paint contaminated debris cleanup and disposal guidelines. It is important to note that all parties removing exterior lead paint, including homeowners performing the work themselves, must comply with DEM Regulation # 24.

It should also be noted that federal law, per 40 CFR Part 745, Lead, requires that contractors, property managers, and others who perform renovations for compensation (including paint removal of more than 2 sq. ft.) on residential houses and apartments built before 1978 provide lead information to residents. Renovators/painters must provide a pamphlet titled "*Protect Your Family from Lead in Your Home*" before starting work, and obtain a signature acknowledging receipt of the pamphlet. It can be downloaded for viewing and printing from the U. S. Environmental Protection Agency (EPA) website at <http://www.epa.gov/lead/leadpdf.pdf>, or in other languages from EPA's website at <http://www.epa.gov/lead/leadprot.htm>. Additional helpful information on this topic can be found in the EPA publication, "Reducing Lead Hazards When Remodeling Your Home", found at <http://www.epa.gov/lead/rpamph.pdf>.

The design of this program was a partnership between the Rhode Island Departments of Environmental Management (DEM) and Health (DOH), the U.S. Environmental Protection Agency, Rhode Island Housing Resources Commission, and the University of Rhode Island Center for Pollution Prevention & Environmental Health. The program will leverage scarce staff resources, and reach a substantially higher percentage of the regulated sector than routine enforcement inspections. Participation in the program is voluntary, with benefits including compliance assistance information that will be provided to program participants. The concept is patterned after the very successful Environmental Results Program initiated by the Massachusetts Department of Environmental Protection, and the Rhode Island Auto Body Environmental/Occupational Health Compliance Self-Certification Program. The program starts with serious consideration to these important facts about lead:

- ◆ Lead paint dust is **DANGEROUS!**
- ◆ Lead poisoning is a serious environmental health hazard.
- ◆ Most houses in Rhode Island built before 1978 contain lead based paint.
- ◆ Renovating lead-painted surfaces creates hazardous dust, fumes, and debris if removed improperly.
- ◆ Lead poisoning can arise from exposure to lead-based paint chips, as well as dust produced, during preparation work for repainting.
- ◆ According to the Rhode Island Department of Health: Lead, even at low levels, can cause children to have learning disabilities, lower IQ, and behavioral problems.
- ◆ Lead can also cause: High blood pressure, Anemia, Brain damage, Impotence, and Death.

Certification materials that were developed for this program include:

- An informational brochure
- A Certification Workbook
- A Certification Checklist Package that includes:
 - A Certification Participation Form & Checklist that is submitted to DEM and,
 - A Project Checklist to be provided by the contractor to the homeowner or occupant, for each exterior lead removal project, prior to starting the paint removal project.

Benefits of participation in the program include:

- Receiving a Certificate of Participation from DEM
- Using certification as a marketing tool with customers
- Being placed on a list of certified paint contractors on DEM's website, at <http://www.dem.ri.gov/programs/benviron/assist/extlead/pdfs/conlist.pdf>
- Receiving free consultation from DEM's Office of Technical & Customer Assistance staff with assistance in complying with applicable environmental requirements
- Being provided with educational and promotional materials

The program will also provide referral information and assistance for appropriate training opportunities, as they are available.

For more information, please contact Tom Armstrong at 401-222-4700, Ext. 4412, or Thomas.Armstrong@dem.ri.gov

Visit us on the web at <http://www.dem.ri.gov/programs/benviron/assist/extlead/index.htm>

A Toxic Nightmare: Why Regulation is Needed

A report published by the National Institutes of Health (2003) described a case of lead poisoning and environmental contamination that resulted from the improper removal of exterior lead-based paint from a home located in a middle-income neighborhood. The uncontrolled removal of lead paint from approximately 3,000 ft² of exterior siding resulted in interior lead dust levels ranging from 390 to 27,600 ug Pb/ft², yard soil lead levels of 360 to 130,000 ppm, lead poisoning (requiring immediate hospitalization) of three children aged 1, 2, and 4, and the death of a 5-year old family pet (dog) that died with a blood lead level of 177 ug/dL. The "hard" costs associated with property decontamination were over \$195,000 (Jacobs, D.E., Mielke, H., and N. Pavur. 2003. The High Cost of Improper Removal of Lead-Based Paint from Housing: A Case Report. *Environmental Health Perspectives*. 111:185-186).

Similarly, Rhode Islanders are at risk when exterior lead-based paint is improperly removed. The careless removal and handling of lead paint from exterior surfaces has resulted in enforcement actions taken against individuals and contractors by Rhode Island Department of Environmental Management, and at least two documented cases of groundwater contamination. In order to protect human health and the environment, DEM enforcement staff continues to inspect sites where painting projects occur.



